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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,384

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Martin Weber

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EXAMINER

KAUCHER, MARK S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

05/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,384	Applicant(s) WEBER ET AL.	
	Examiner MARK S. KAUCHER	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 24-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 24-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

All outstanding objections and rejections made in the previous Office Action, and not repeated below, are hereby withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.

The new grounds of rejection set forth below are necessitated by applicant's amendment filed on 03/02/2009. In particular, newly added claims 26-29 has been amended to require components F and D respectively. The newly introduced limitations and the new claims were not present at the time of the preceding action. For this reason, the present action is properly made final.

Claim Rejections - 35 USC § 112

1. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 is indefinite because it is not clear how a graft copolymer (P) can be prepared from component (A) (a polyamide) and component (B) (an ABS graft polymer). Acrylonitrile-butadiene-styrene graft copolymer (ABS) comprises no groups that can react with the polyamide. Furthermore, no details in the specification describe a method

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of reacting the two components. It is noted that component (A) and component (C) (a rubber free copolymer with groups that can react with a polyamide) are reacted in the specification to form a graft copolymer (P). However, it is unclear what the graft copolymer (P) of instant claim 20 made from (A) and (B) entails. Furthermore, it appears unnecessary to premix two unreactive materials prior to mixing the rest of the ingredients.

Claim Rejections - 35 USC § 103

2. Claims 12-22, 24-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorrestijn et al. (US 5,948,858).

The rejection (with respect to claims 12-22 and 24-25) is adequately set forth in paragraphs 5-8 of the Office Action mailed 12/01/2008.

3. As to claim 28, first, it is noted that there is no limitation that component D (a rubber-free matrix polymer) and component C (a rubber-free copolymer) cannot be the same, therefore, by definition and prior art that comprises component C, must, by definition, comprise component C. Secondly, Dorrestijn et al. clearly envisions the use of extraneous resins such as SAN (styrene acrylonitrile copolymers) as an optional ingredient. See col. 4, lines 8-10. The prior art fails to disclose an anticipatory example, or specifically name the claimed composition. However, each of the components of the composition is described in the reference. Therefore, it would have been obvious to one of ordinary skill in the art to have made any of the compositions described by the reference, including the claimed composition.

4. Claims 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorrestijn et al. (US 5,948,858) in view of Gottschalk et al. (US 6,284,830).

5. As to claims 26-29, Dorrestijn et al. discloses the use of additives such as lubricants. See col. 5, lines 60-67.

However, Dorrestijn et al. is silent on the specifics of the lubricant (i.e. stearates).

Gottschalk et al. teaches of similar compositions (polyamides with multiple grafts and rubber-free components, and additives). See abstract. Gottschalk et al. teaches that the additive can be a lubricant such as alkyl stearates. See col. 30, lines 34-39 and col. 30, line 66 through col. 31, line 5.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the composition of Dorrestijn et al. with the lubricant, stearate, because Gottschalk et al. teaches that stearates are suitable lubricants for similar compositions.

Response to Arguments

6. Applicant's arguments filed 03/02/2009 have been fully considered but they are not persuasive. Specifically, applicant argues (A) that Dorrestijn et al. discloses that the rubber of the graft copolymer cannot contain any groups which can react with the end groups of the polyamide; (B) Dorrestijn et al. is silent on the composition having two graft copolymers of ABS that differ by at least 5 wt%; (C) rejections cannot be mere conclusory statements (with respect to two graft copolymers) and that the examiner

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cannot selectively pick and choose from the disclosed parameters without proper motivation "unless the prior art suggested the desirability of such modification"; and (D) that the mere fact that a reference may be modified to reflect features of the claimed invention does not make the modification obvious unless the prior art suggested the desirability of such modification.

7. With respect to argument (A), it is noted that the features upon which applicant relies (i.e., the rubber of the graft copolymer is not reactive with the polyamide) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It is also noted that it does not appear the instant specification teaches such a limitation (although the line in paragraph [00014] of the instant specification is acknowledged). Again, it is not immediately clear how this feature is critical, since it appears that the polyamide does not react with the graft copolymer.

8. With respect to arguments (B) and (C), Dorrestijn et al. clearly discloses that the graft copolymer may have a "bimodal particle size distribution, i.e. a particle size distribution in which the particle sizes are grouped around two different average particle sizes." See col. 3, lines 44-60 (it is noted that the column and lines were recited in the previous office action dated 12/01/2008). Therefore, the graft copolymers (ABS) may be two different sizes, thus differing by 5 wt%, since the size distributions must be significantly different in order to be described as bimodal. The prior art fails to disclose an anticipatory example, or specifically name the claimed composition. However, each

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of the components of the composition is described in the reference. Therefore, it would have been obvious to one of ordinary skill in the art to have made any of the compositions described by the reference, including the claimed composition.

9. With respect to argument (D), it is the examiner's position that the order of mixing unreactive components (components unreactive with each other) A and B first, followed by mixing the rest of the ingredients does not materially change or alter the composition. Furthermore, by definition, two of the components are first added (mixed) together before others are added. Finally, it would have been obvious to mix unreactive components in any order, in the absence of new or unexpected results. Ex parte Rubin, 128 USPQ 440 (Bd. App. 1959) (Prior art reference disclosing a process of making a laminated sheet wherein a base sheet is first coated with a metallic film and thereafter impregnated with a thermosetting material was held to render prima facie obvious claims directed to a process of making a laminated sheet by reversing the order of the prior art process steps.). See also In re Burhans, 154 F.2d 690, 69 USPQ 330 (CCPA 1946) (selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results); In re Gibson, 39 F.2d 975, 5 USPQ 230 (CCPA 1930) (Selection of any order of mixing ingredients is prima facie obvious.).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK S. KAUCHER whose telephone number is (571) 270-7340. The examiner can normally be reached on Monday to Thursday, 8:00 AM to 7:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasudevan S. Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/MARK S KAUCHER/
Examiner, Art Unit 1796

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796